

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
STEVEN SHORT, :
Petitioner, :
-against- : 24 CV 3976 (LAP)
: 19 CR 0704 (LAP)
:
UNITED STATES OF AMERICA, : ORDER
:
Respondent. :
:

LORETTA A. PRESKA, Senior United States District Judge:

Mr. Short moves for leave to amend his habeas petition pursuant to Federal Rules of Civil Procedure 15(a)(1)(B) and 15(a)(2). (See dkt. no. 6.) Because Rule 15(a)(1)(B) does not apply to habeas proceedings, see Argraves v. United States, No. 3:11-CV-1421, 2013 WL 1856527 at *2 (D. Conn. May 2, 2013); Soler v. United States, No. 05 CRIM. 165 RJH, 2010 WL 4456343, at *2 (S.D.N.Y. Oct. 18, 2010), the only basis for amendment is Rule 15(a)(2).

Under Rule 15(a)(2), courts are instructed to grant leave "when justice so requires." Fed. R. Civ. P. 15(a)(2). Here, the statute of limitations for filing a § 2255 claim expired on May 16, 2024, see 28 U.S.C. § 2255(f)(1), and amendment would be untimely unless it relates back to the original complaint under Rule 15(c). Amended claims relate back to the original petition where the claims arise out of the same "conduct, transaction, or occurrence

set out - or attempted to be set out - in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). Specifically, relation back is permitted where the "original and amended petitions state claims that are tied to a common core of operative facts." Ozsusamlar v. United States, No. 10-cv-6655 (KMW), 2013 WL 4623648, at *3 (S.D.N.Y. Aug. 29, 2013) (internal quotation marks omitted). In other words, an amended habeas petition does not relate back where "it asserts a new ground for relief supported by facts that differ in both time and type from those the original pleading set forth." See Gonzalez v. United States, No. 08 Cr. 684 (VSB), 2018 WL 5023941, at *3 (S.D.N.Y. Oct. 17, 2018) (quotation omitted). Here, Mr. Short's letter-motion for leave does not provide the Court sufficient information to determine if the proposed amendment relates back to the original petition and, thus, if the proposed amendment is timely.

To the extent that Mr. Short still wishes to amend his petition, he shall file a proposed amended petition no later than September 27, 2024. If Mr. Short does not file an amended petition and instead chooses to proceed on his initial petition, he shall have until September 27, 2024 to file any reply to the Government's opposition. The Clerk of the Court is directed to mail a copy of this order and the Government's response, (dkt. no. 8), to Mr. Short.

SO ORDERED.

Dated: New York, New York
 August 28, 2024



LORETTA A. PRESKA
Senior United States District Judge